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February 6, 1995

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

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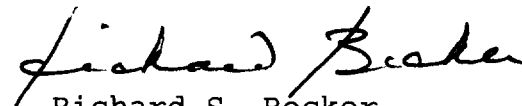
Re: In re Application of Ellis  
Thompson Corporation for  
Facilities in the Domestic  
Public Cellular Radio  
Telecommunications Service  
on Frequency Block A in  
Market No. 134, Atlantic  
City, New Jersey  
CC Docket No. 94-136  
File No. 14261-CL-P-134-A-86

Dear Mr. Caton:

Transmitted herewith on behalf of Ameritel is one (1) original and six (6) copies of its Petition to Intervene filed with respect to the above-referenced proceeding.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,

  
Richard S. Becker  
Attorney for Ameritel

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEB - 6 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of )  
 )  
ELLIS THOMPSON CORPORATION )  
 )  
For Facilities in the )  
Domestic Public Cellular )  
Radio Telecommunications )  
Service on Frequency Block A )  
in Market No. 134, Atlantic )  
City, New Jersey )

CC DOCKET NO. 94-136

File No. 14261-CL-P-134-A-86

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To: Administrative Law Judge Joseph Chachkin

PETITION TO INTERVENE

Ameritel ("Ameritel"), by its attorneys and pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"),<sup>1</sup> and Section 1.223 of the Commission's Rules,<sup>2</sup> hereby requests that it be permitted to intervene as a party in interest in the hearing designated by the Commission in the above-captioned matter.<sup>3</sup> In support of this Petition, the following is respectfully shown:

I. Factual Background

1. By Public Notice dated April 23, 1986,<sup>4</sup> the Commission announced the first ten (10) mutually-exclusive ("MX") applications that had been selected in a lottery held on April 21, 1986, for the

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<sup>1</sup>47 U.S.C. §309(e).

<sup>2</sup>47 C.F.R. §1.223.

<sup>3</sup>The above-captioned application was designated for hearing in Ellis Thompson Corporation, CC Docket No. 94-136, 9 FCC Rcd 7138 (1994) (hereinafter "HDO").

<sup>4</sup>Public Notice, Mimeo No. 4024 (April 23, 1986) (hereinafter "PN"). A copy of the PN is attached hereto as Exhibit 1.

nonwireline cellular authorization ("Authorization") to serve the Atlantic City, New Jersey Metropolitan Statistical Area ("MSA").<sup>5</sup> The first-selected MX application was the above-captioned application ("Application") of Ellis Thompson.<sup>6</sup> The fifth-selected MX application was the application of Ameritel, Inc.<sup>7</sup>

2. Pursuant to the results of the April 21, 1986, lottery, the Commission processed and granted the Application and issued Thompson the Authorization to construct and operate the nonwireline Atlantic City cellular system (the "System"). Pursuant to a management agreement with American Cellular Network Corporation ("Amcell"), Thompson constructed and currently operates the System.<sup>8</sup>

3. As specified in the HDO, however, pursuant to timely-filed appeals, the Commission has now rescinded the Authorization pending the outcome of a hearing for the purpose of resolving the following issue:

To determine whether [Amcell] is a real-party-in-interest in the application of [Thompson] ... and, if so, the effect thereof on [Thompson's] qualifications to be a

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<sup>5</sup>Market No. 134, Frequency Block A.

<sup>6</sup>The original applicant in the Application was Ellis Thompson. PN at 4. On November 21, 1988, however, the Commission granted its consent to the pro forma assignment of the Authorization from Ellis Thompson to Ellis Thompson Corporation ("Thompson"). As a result, the HDO captioned Thompson as the applicant. For ease of reference throughout this pleading, Thompson will be specified as the applicant and original holder of the Authorization.

<sup>7</sup>File No. 14310-CL-P-134-A-86. It should be noted that the petitioner herein, Ameritel, is an Ohio general partnership that is the successor-in-interest to Ameritel, Inc. For ease of reference throughout this pleading, Ameritel will be specified as the original applicant.

<sup>8</sup>See HDO at 7138, 7143.

Commission licensee.<sup>9</sup>

In the event that Thompson is found unqualified to be a Commission licensee, the Application will be dismissed and Thompson will no longer be the licensee of the System. In that case, the Commission must then examine the qualifications of the alternative lottery selectees in descending order of their rank as established by the Commission's April 21, 1986, lottery.<sup>10</sup> The next-highest ranked lottery selectee found to be qualified under the Commission's Rules will be granted the Authorization.<sup>11</sup>

**II. Ameritel's Status As An MX Applicant  
And Fifth-Ranked Lottery Selectee  
Provides It Standing To Intervene  
In This Proceeding As A Matter Of Right**

4. Section 1.223(a) of the Commission's Rules provides, in relevant part, that:

Where ... the Commission has failed to notify and name as a party to the hearing any person who qualifies as a party in interest, such person may acquire the status of a party by filing, under oath and not more than 30 days after the publication in the Federal Register of the hearing issues ... a petition for intervention showing the basis of its interest. ... Where the person's status as a party in interest is established, the petition to intervene will be granted.

47 C.F.R. §1.223(a); see also 47 U.S.C. §309(e).

In Algreg Cellular Engineering, the Review Board held unequivocally that an intervenor's status as an MX applicant provided the

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<sup>9</sup>Id. at 7143. It should be noted that Thompson was granted interim authority to continue operating the System pending the outcome of the hearing. Id.

<sup>10</sup>See Report and Order, CC Docket No. 83-1096, 98 FCC 2d 175, 219-221 (1984), recon., 101 FCC 2d 577 (1985); see also 47 C.F.R. §1.823.

<sup>11</sup> Id.

intervenor standing to intervene in a hearing proceeding as a matter of right pursuant to Section 309(e) of the Act and Section 1.223(a) of the Commission's Rules.<sup>12</sup>

5. As demonstrated above, Ameritel is an MX applicant for the Authorization. As the fifth-ranked selectee in the Commission's April 21, 1986, lottery, Ameritel could become the tentative selectee and ultimately obtain the Atlantic City Authorization.<sup>13</sup> Based on these facts, Ameritel has standing to intervene as a matter of right in the above-captioned hearing proceeding.<sup>14</sup> Accordingly, Ameritel respectfully requests that the instant Petition should be granted.<sup>15</sup>

**III. Ameritel Should Also Be Permitted To Intervene To Assist In Determination Of The Issue Designated In The HDO**

6. Although Ameritel is entitled to intervene in the above-captioned hearing as a matter of right pursuant to Section 1.223(a)

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<sup>12</sup>Algreq Cellular Engineering, CC Docket No. 91-142 6 FCC Rcd 5299, 5300 (Rev.Bd. 1991) (hereinafter "Algreq"); see also Virginia Communications, Inc., 2 FCC Rcd 1895 (1987) (competing applicants for MMDS licenses were parties in interest with respect to the determination of whether lottery winners were qualified); Elm City Broadcasting Corporation v. United States, 235 F.2d 811, 816 (D.C.Cir. 1956) (the Commission "may not deny intervention to a party in interest merely because it thinks his participation would not aid its decisional process.")

<sup>13</sup>See note 10, supra.

<sup>14</sup>Algreq, 6 FCC Rcd at 5299.

<sup>15</sup>It should be noted that the HDO was published in the Federal Register on January 5, 1995. 60 Fed. Reg. 1776. Accordingly, the instant Petition is timely filed within thirty (30) days of such publication as required by Section 309(e) of the Act and Section 1.223(a) of the Commission's Rules. 47 U.S.C. §309(e); 47 C.F.R. §1.223(a). In addition, attached hereto as Exhibit 2 is a Declaration on behalf of Ameritel supporting the instant Petition as required by Section 1.223(a) of the Commission's Rules. 47 C.F.R. §1.223(a).

of the Commission's Rules, Ameritel also respectfully submits that it should be allowed to intervene pursuant to the discretionary authority specified in Section 1.223(b) of the Commission's Rules. Specifically, Section 1.223(b) provides that the presiding officer may allow any other person to intervene upon a showing that the "petitioner's participation will assist the Commission in the determination of the issues in question...."<sup>16</sup>

7. In the instant case, the HDO designated only three non-Commission parties to the proceeding: Thompson, the applicant; Amcell, the entity that constructed the System and manages it pursuant to a management agreement (and who has other contractual relationships with Thompson relating to the Authorization); and Telephone and Data Systems, Inc. ("TDS"), the entity that holds an option to purchase Thompson's interest in the Authorization.<sup>17</sup> Neither Amcell nor TDS were among the ten MX applicants selected in the Commission's April 21, 1986, lottery for the Atlantic City Authorization. In point of fact, if Thompson is found unqualified to be a Commission licensee, neither Amcell nor TDS will have any interest in the Authorization or right to operate the System. Accordingly, even though Amcell and TDS have engaged in extensive litigation in this proceeding to date, a finding that Thompson is unqualified to hold the Authorization will result in neither TDS nor Amcell retaining any interest in the Atlantic City Authorization. This "lose-lose" scenario substantially lessens the incentive of both TDS and Amcell to fully investigate and examine

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<sup>16</sup>47 C.F.R. §1.223(b).

<sup>17</sup>HDO at 7138, 7143.

the issue designated in the HDO. Success in such efforts would result in Thompson's loss of the Authorization and would leave neither TDS nor Amcell with any interest in the Authorization or right to operate the System.

8. Ameritel, on the other hand, is an MX applicant for the Authorization with every incentive to fully examine Thompson's qualifications. If Thompson is found unqualified to be a Commission licensee, Ameritel -- unlike TDS and Amcell -- stands in line to receive the Authorization. As a result, Ameritel respectfully submits that its participation in the above-captioned proceeding will assist the Commission in fully exploring the relationship between Thompson and Amcell and whether that relationship renders Thompson unqualified to be a Commission licensee. Ameritel's interests in participating in the above-captioned hearing proceeding are different than those of TDS or Amcell. Of these parties, only Ameritel ultimately stands to benefit from a finding that Thompson is unqualified to be a Commission licensee.

9. Accordingly, Ameritel respectfully submits that the instant Petition should also be granted pursuant to the discretionary authority specified in Section 1.223(b) of the Commission's Rules.<sup>18</sup>

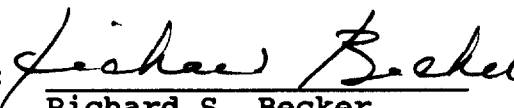
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<sup>18</sup>This Petition is both timely and properly supported by the Declaration attached hereto as Exhibit 2 as required by Section 1.223(b) of the Commission's Rules. See note 15, supra.

**WHEREFORE**, for all of the foregoing reasons, Ameritel hereby respectfully requests grant of the instant Petition To Intervene.

Respectfully submitted,

**AMERITEL**

By: 

Richard S. Becker  
James S. Finerfrock  
Jeffrey E. Rummel

Its Attorneys

Richard S. Becker & Associates, Chartered  
1915 Eye Street, Northwest  
Eighth Floor  
Washington, DC 20006  
(202) 833-4422

Date: February 6, 1995



**Exhibit 1**

**APRIL 23, 1986, PM**

Market 131 Rockford, Illinois

1. 13462-CL-P-131-A-86 National Cellular Communications
2. 13024-CL-P-131-A-86 Warren American Oil Company
3. 13710-CL-P-131-A-86 Dr. A. L. Rice
4. 12816-CL-P-131-A-86 Gauss Associates
5. 17501-CL-P-131-A-86 Ronald & Darlene Saccino
6. 14569-CL-P-131-A-86 Miller Communications, Inc.
7. 15896-CL-P-131-A-86 C. K. M. L. Partnership
8. 10748-CL-P-131-A-86 Mary Ruth Roberts
9. 14406-CL-P-131-A-86 David S. Smith
10. 11844-CL-P-131-A-86 Edward J. Conlon Cellular Company

Market 132 Kalamazoo, Michigan

1. 16546-CL-P-132-A-86 GTRW Partnership
2. 11269-CL-P-132-A-86 Macromedia Telecommunications, Inc.
3. 10239-CL-P-132-A-86 R & W Partnership
4. 15486-CL-P-132-A-86 Taylor Interactive Components, Inc.
5. 18088-CL-P-132-A-86 UWB Cellular Joint Venture
6. 13459-CL-P-132-A-86 ACLA Investments
7. 14233-CL-P-132-A-86 EE Partners
8. 15175-CL-P-132-A-86 J.T.A., Inc.
9. 12073-CL-P-132-A-86 Charles M. Miller
10. 11299-CL-P-132-A-86 Alpha Cellular

Market 133 Manchester-Nashua, New Hampshire

1. 13998-CL-P-133-A-86 JMF-Partnership
2. 12024-CL-P-133-A-86 Connolly Associates
3. 10787-CL-P-133-A-86 Fliny A. Price
4. 16195-CL-P-133-A-86 A. Douglas Sink, Sr.
5. 11642-CL-P-133-A-86 Reality Properties, Inc.
6. 13521-CL-P-133-A-86 David L. Fehrenkamp
7. 13643-CL-P-133-A-86 Richard J. Rose
8. 13508-CL-P-133-A-86 The Blythe Group
9. 13254-CL-P-133-A-86 Theodore H. Koenig, Jr.
10. 14711-CL-P-133-A-86 Dr. Financial

Market 134 Atlantic City, New Jersey

1. 14261-CL-P-134-A-86 Ellis Thompson
2. 12179-CL-P-134-A-86 J. Dudack Communications
3. 14566-CL-P-134-A-86 RJR Communications, Inc.
4. 17649-CL-P-134-A-86 F & F Communications
5. 14310-CL-P-134-A-86 Ameritel, Inc.
6. 12812-CL-P-134-A-86 Crown Car Phone
7. 12516-CL-P-134-A-86 Christopher Kane
8. 11315-CL-P-134-A-86 S. Ouchi Communications
9. 15284-CL-P-134-A-86 Tom McAdam
10. 14608-CL-P-134-A-86 Mirecall of North Carolina, Inc.

**Exhibit 2**

**DECLARATION OF RICHARD ROWLEY**

EXHIBIT 2

DECLARATION OF  
RICHARD ROWLEY

I, Richard Rowley, hereby declare under penalty of perjury under the laws of the United States of America as follows:

1. I am a general partner in Ameritel ("Ameritel"), successor-in-interest to Ameritel, Inc.

2. I have reviewed the foregoing "Petition To Intervene" ("Petition") to be filed on behalf of Ameritel with the Federal Communications Commission ("Commission") with respect to the hearing designated by the Commission in CC Docket No. 94-136 in connection with the application of Ellis Thompson Corporation for nonwireline cellular facilities to operate on frequency block A in Atlantic City, New Jersey (File No. 14261-CL-P-134-A-86).

3. Except for those facts of which official notice may be taken by the Commission, all facts set forth in the foregoing Petition are true and correct of my own personal knowledge and belief.

DATE: February 3, 1995

  
Richard Rowley

**CERTIFICATE OF SERVICE**

I, Vicky Chandor, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 6th day of February, 1995, sent by First Class United States mail, postage prepaid, copies of the foregoing "**PETITION TO INTERVENE**" to the following:

Honorable Joseph Chachkin\*  
Federal Communications Commission  
2000 L Street, N.W.  
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Enforcement Division  
Federal Communications Commission  
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Regina Keeney, Chief\*  
Wireless Telecommunications Bureau  
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